

BEFORE THE BOARD OF MEDICAL EXAMINERS  
STATE OF MONTANA

IN THE MATTER OF DOCKET NO. CC-05-0046-MED REGARDING:

THE PROPOSED DISCIPLINARY	)	Case No. 714-2005
TREATMENT OF THE LICENSE OF	)	
STANLEY ROBERT SCHURE, MD,	)	<b>PROPOSED FINDINGS OF FACT,</b>
License No. 3919.	)	<b>CONCLUSIONS OF LAW AND</b>
	)	<b>RECOMMENDED ORDER</b>

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**I. INTRODUCTION**

The hearing convened and ended on December 7, 2005. M. Gene Allison represented the department. Licensee Stanley Robert Schure participated on his own behalf. Presiding hearing examiner Terry Spear admitted Exhibits 1-A, 2 through 8, 10 through 16, 16-A, 17 through 22 and 24 through 28, by stipulation of the parties. Michael J. Ramirez and Stanley Robert Schure testified. The parties agreed upon a schedule for post-hearing submissions.

During the course of the hearing, the licensee made the observation that both the hearing examiner and department counsel were employees of the same agency and the licensee felt that both had the “same goals” in apparent collusion against him. The hearing examiner construed the observation as a motion to disqualify, subsequently denying it by written order (“Post Hearing Schedule and Order Denying Disqualification”).

The parties filed their post-hearing submissions as scheduled and this matter was submitted for a proposed decision on March 20, 2006.

**II. ISSUE**

The issue in this case is whether Schure failed to comply with an agreement reached with the Montana Physicians’ Assistance Program (MPAP), established by the Board under Mont. Code Ann. § 37-3-203(4), thereby violating the prohibitions of Admin. R. Mont. 24.156.625(1)(w) and if so, what penalty the Montana Board of Medical Examiners should impose.

### III. FINDINGS OF FACT

1. Stanley Robert Schure failed to comply with the terms of his June 15, 2001, Montana Professional Assistance Program (MPAP) contract by failing to submit numerous urine specimens, failing to pre-report drug prescriptions written for him, testing positive for unreported and prohibited substances, failing to inform the administrator at his place of work regarding his involvement with MPAP and the need for professional oversight and failing to obtain preapproval before changing employment.

2. Documents DLI - 1 through DLI - 211A are true, complete and authentic copies of the original documents.

3. Schure holds Montana License No. 3919 from the Montana Board of Medical Examiners to practice as a medical doctor.

4. On or about March 31, 2000, Schure entered into an Aftercare Agreement with MPAP as a result of chemical dependency issues.

5. Prior to March 31, 2000, Schure received residential treatment for chemical addiction on three separate occasions.

6. Schure first contracted with MPAP in 1994, returning to drug use in 1995.

7. Schure has entered into a total of six MPAP aftercare agreements, and has failed to comply fully with any of them.

8. On or about June 15, 2001, Schure entered into his latest Aftercare Agreement. Under the terms of that contract, he agreed to abstain completely from the use of alcohol and all medications except upon specific prescription by his primary care physician, in consultation with the Medical Director or Clinical Coordinator of MPAP.

9. Under the terms of the June 15, 2001, MPAP contract, Schure agreed to notify an MPAP representative immediately if he did ingest or otherwise use such a substance without the required prescription or prior approval.

10. Under the terms of the June 15, 2001, MPAP contract, in the event that any medication was required for treatment of a medical illness or condition, Schure was required to notify the Board and MPAP in advance of taking any such

medication or drug and provide complete descriptive information regarding the prescribed substance, dosage, frequency, suspected duration and the reason for the change in medication.

11. Under the terms of the June 15, 2001, MPAP contract, Schure was also required to inform his primary care physician, dentist and any other health care provider who had prescriptive authority of the nature of his disease and the limitations imposed on him by the MPAP agreement.

12. Under the terms of the June 15, 2001, MPAP contract, Schure was also to request that the primary care physician not prescribe any of the prohibited medications to him unless there is no reasonable medical alternative and to cause his primary care physician to inform MPAP in advance if any medications needed to be prescribed.

13. Under the terms of the June 15, 2001, MPAP contract, Schure also agreed and was required to participate in a random body fluid and/or blood screening, breath analysis or hair analysis program wherein he was to provide samples no less than twice monthly of which all required specimens were to be submitted within three hours of notification and on demand voluntarily and without question in the presence of an MPAP-approved observer.

14. Under the terms of the June 15, 2001, MPAP contract, Schure agreed that failure to submit an observed specimen when requested would be construed as a “positive test result” and reported to the Board.

15. A quarterly self-report was due from Schure on July 20, 2001. As of January 2002, he still had not filed the report.

16. Schure resigned his job in St. Ignatius and took a job at a Missoula chiropractic center without notifying MPAP, in violation of his MPAP agreement.

17. In November 2002, Schure provided one of two required urine specimens.

18. In December 2002, Schure provided one of two required urine specimens.

19. In approximately December 2002, Schure’s Drug Test Collector, who was also the administrator where he worked, resigned his job and left Missoula. Schure failed to notify the new administrator of his involvement with MPAP and the need

for professional oversight. It was MPAP that arranged for the new administrator to become his Drug Test Collector.

20. In February 2003, Schure provided one of two required urine specimens.

21. On February 20, 2003, Schure reported that he was on oxycontin for osteoarthritic knees. He did not pre-report the prescription nor provide the documentation required by his MPAP Aftercare Agreement.

22. In March 2003, Schure provided one of two required urine specimens. The specimen tested positive for hydrocodone.

23. In August 2003, Schure provided two of two required urine specimens, the second of which tested positive for hydrocodone, which was prescribed to him for knee pain but for which he had not sought prior approval as required by his MPAP Aftercare Agreement.

24. In September 2003, Schure provided one of two required urine specimens. The specimen tested positive for hydrocodone.

25. In October 2003, Schure provided one of two required urine specimens. The specimen tested positive for hydrocodone and oxycodone.

26. In December 2003, Schure provided one of two required urine specimens which specimen was positive for presence of both hydrocodone and oxazepam.

27. In January 2004, Schure provided none of the required urine specimens.

28. After January 2004, Schure was asked to undergo addiction medicine and pain management evaluations locally. He initially said he was unwilling to do so. He was given the names of three out of state providers but failed to be evaluated by any of them. Eventually, he was evaluated by a Helena doctor who opined that other, more effective medicines and modalities were available for someone with his history.

29. On April 7, 2004, MPAP Clinical Coordinator Michael Ramirez reported to the Board that Schure was noncompliant with his MPAP agreement.

30. On April 28, 2004, Schure called the Board and said he was withdrawing from the practice of medicine.

31. On May 8, 2004, Schure sent a letter to the Board of Medical Examiners, stating that as of May 22, 2004, he would retire from the practice of medicine and would no longer need his license.

32. Schure sent a letter to the Board of Medical Examiners dated June 1, 2004, in which he stated, “Effective May 22, 2004, I have resigned from MPAP.”

33. By January 2004, Schure had routinely failed to give timely notices to MPAP with respect to change in health status or change in prescribed medications as required by his MPAP agreement and specifically failed to pre-report his prescriptions for hydrocodone, oxycodone, and oxazepam.

34. The prescription drugs for which Schure’s urine specimens tested positive were medications upon which he was dependent and received residential treatment on three occasions.

35. Schure has repeatedly failed and refused to comply with his most recent MPAP agreement, beginning within 45 days of entering into that agreement and continuing over a period in excess of 3 years.

36. Schure’s testimony at hearing and his filings in this case (before and after hearing) establish that he accepts no responsibility for his failures at compliance with the most recent and the previous MPAP agreements. There is no reasonable prospect that he will, in the foreseeable future, conform his conduct to the requirements of any MPAP program to which he agrees.

37. There is no reasonable prospect that the Board can rely upon Schure to refrain from the same conduct in the future as during the time of his most recent agreement with MPAP. As a result, the Board cannot verify that Schure, should he at any time engage in the practice of medicine in Montana, will be fit and able to practice without undue risk to the safety of the public, since Schure continues both to avoid compliance with the monitoring requirements on his medication use and to violate the constraints placed upon his use of medications on which he has been dependent and for which he has three times received residential treatment.

#### **IV. DISCUSSION**

Statements of fact in this discussion are hereby incorporated by reference to supplemental fact findings. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

The Montana Board of Medical Examiners licenses physicians and disciplines licensees who engage in unprofessional conduct. Mont. Code Ann. §§ 37-1-307 and 37-54-105. The Department of Labor and Industry is charged with providing legal, investigative, and other staff services to the Board. Mont. Code Ann. § 37-1-101.

Mont. Code Ann. § 37-1-319(5) empowers the Board to define acts of unprofessional conduct in addition to those stated in Mont. Code Ann. § 37-1-316. The Board has adopted a regulation, Admin. R. Mont. 24.156.625, which contains those definitions.

Admin. R. Mont. 24.156.625(1)(w) provides that unprofessional conduct includes “failing to comply with an agreement the licensee has entered into with the program established by the board under [Mont. Code Ann. § 37-3-203(4)] . . . .” MPAP is such a program. The evidence at hearing did not justify altering or adding to the facts deemed admitted due to Schure’s failure timely to respond to requests for admission. Those facts proved that Schure repeatedly failed to comply with his most recent agreement with MPAP.

The evidence presented at hearing established that Schure’s noncompliance with his most recent agreement with MPAP continued a pattern of noncompliance with his prior MPAP agreements. The evidence presented at hearing, largely through Schure’s own testimony, further established that Schure denied any responsibilities for those failures, blaming variously the MPAP Clinical Coordinator, the Board itself, the lawyer prosecuting the case, the hearing examiner, his urine collectors, his colleagues, the administrators at his places of work and his (genuine) health problems. Schure presented evidence that he argued proved that the MPAP Clinical Coordinator was unfit for the position, that MPAP was poorly organized and unresponsive to his needs and wants and that his genuine problems were at too high and complex a level for MPAP to understand and to address. His evidence and arguments were neither credible nor persuasive. Schure has engaged in a pattern of unprofessional conduct, and is either unwilling or unable to conform his conduct to the Board’s rehabilitative requirements.

The department has the burden of proof to show by a preponderance of the evidence that the licensee did commit an act or acts of unprofessional conduct. Mont. Code Ann. § 37-3-311; *Ulrich v. State ex rel. Board of Funeral Service*, 1998 MT 196, 289 Mont. 407, 961 P.2d 126. The department met that burden. Schure violated Title 37, Chapter 1, Part 3, by engaging in unprofessional conduct.

A regulatory board may impose any sanction authorized pursuant to Mont. Code Ann. Title 37, Chapter 1, upon a finding of unprofessional conduct. Mont. Code Ann. § 37-1-307(e). Mont. Code Ann. § 37-1-312 provides that upon a determination that the licensee has violated Title 37, Chapter 1, Part 3, the board may issue an order providing for a range of sanctions, which include as the ultimate sanction revocation of the professional license.

To determine which sanctions are appropriate, the regulatory board must first consider the sanctions necessary to protect the public. Only after this determination has been made can the Board then consider and include in the order requirements designed to rehabilitate the licensee. Mont. Code Ann. § 37-1-312(2). In this case, the facts require revocation, for the protection of the public. Even if the Board could consider and include in the order requirements designed to rehabilitate the licensee, Schure's pattern of noncompliance, coupled with total denial of any responsibility for his noncompliance, would make it impossible to recommend any intermediate sanctions aimed at rehabilitation. In the face of the licensee's recalcitrance, the Board need not continue rehabilitation efforts until actual harm to the public occurs. Likewise, the Board cannot accept Schure's assertions that he is retired or will retire as sufficient to protect the public from the risk of harm.

## **V. CONCLUSIONS OF LAW**

1. Jurisdiction of this matter is vested in the Montana Board of Medical Examiners. Mont. Code Ann. §§ 37-3-323(1) and 37-1-312(1).

2. Stanley Robert Schure, License No. 3919, engaged in unprofessional conduct when he repeatedly failed and refused to comply with his most recent agreement with MPAP, a program the Board established pursuant to the provisions of Mont. Code Ann. § 37-3-203(4). Admin. R. Mont. 24.156.625(1)(w).

3. Upon the finding of unprofessional conduct, the Board may issue an order imposing sanctions upon the license. Based upon the risk to the public, the appropriate sanction is revocation of Schure's license to practice medicine in Montana. No lesser sanction is sufficient at this time to assure protection of the public. Mont. Code Ann. § 37-1-312(1)(a) and (2).

## VI. RECOMMENDED ORDER

The hearing examiner recommends that the Board of Medical Examiners issue an order revoking the license of Stanley Robert Schure, M.D., License No. 3919.

DATED this 31st day of March, 2006.

DEPARTMENT OF LABOR & INDUSTRY  
HEARINGS BUREAU

By: /s/ TERRY SPEAR  
Terry Spear  
Hearing Examiner

### NOTICE

Mont. Code Ann. § 2-4-621 provides that the proposed order in this matter, being adverse to the licensee, may not be made final by the regulatory board until this proposed order is served upon each of the parties and the party adversely affected by the proposed order is given an opportunity to file exceptions and present briefs and oral argument to the regulatory board.